

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217403

DATE: September 30, 1985

MATTER OF: Corps of Engineers - Prevailing Rate
Employees - Effect of Pay Cap on Pay Changes
Resulting From Reassignment between Wage Areas

DIGEST:

The cap on salary rate increases for prevailing rate employees during fiscal year 1980 and succeeding years does not restrict the pay changes required to adjust the appropriate rate of pay for prevailing rate employees who were "transferred in place" between the Chicago and Rock Island Districts of the Corps of Engineers as a result of a realignment of District boundaries on June 29, 1980. These adjustments did not result from a wage survey and are, therefore, outside the scope of the pay cap legislation.

The issue here is whether the statutory pay cap on the salary rates of prevailing rate employees in effect for fiscal year 1980 and succeeding years applies to pay adjustments for prevailing rate employees of the Army Corps of Engineers who were "transferred in place" on June 29, 1980, from the Chicago District to the Rock Island District as a result of a realignment of district boundaries. This adjustment places such employees on the same wage schedules applicable to the rest of the employees in their new district.^{1/} For the reasons set forth below, we hold that the pay cap does not apply to the adjustments in question.

The National Federation of Federal Employees, as the representative of prevailing rate employees in the Rock Island District, Corps of Engineers, Rock Island, Illinois, contends that those prevailing rate employees who were "transferred in place" from the Chicago District to the Rock Island District on June 29, 1980, as a result of a

^{1/} This matter has been presented by Mr. James M. Peirce, President, National Federation of Federal Employees, under our procedures set forth at 4 C.F.R. Part 22 for decisions on appropriated fund expenditures which are of mutual concern to agencies and labor organizations. The Commanding Officer, Rock Island District Corps of Engineers, submitted comments for that agency.

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realignment of district boundaries were and continue to be erroneously denied their proper rates of pay since the date of the transfer. This results from the Corps of Engineers' refusal to apply the wage schedules pertaining to the Rock Island District to these employees.

During fiscal years 1980 through 1984 there were caps enacted on the pay increases which could be allowed prevailing rate employees.^{2/} The pay increase cap in effect for fiscal year 1980, and effective at the time the employees in question were transferred to the Rock Island wage area, provided:

"(a) No part of any of the funds appropriated for the fiscal year ending September 30, 1980, by this Act or any other Act, may be used to pay the salary or pay of any individual in any office or position in an amount which exceeds the rate of salary or basic pay payable for such office or position on September 30, 1979, by more than the overall average percentage increase in the General Schedule rates of basic pay, as a result of any adjustments which take effect during such fiscal year under section

^{2/} For fiscal year 1984, see section 2202 of the Deficit Reduction Act of 1984, Public Law 98-369, July 18, 1984, 98 Stat. 494, 1058; section 202(b) of the Omnibus Budget Reconciliation Act of 1983, Public Law 98-270, April 18, 1984, 98 Stat. 157, 158; and section 110 of Public Law 98-107, October 1, 1983, 97 Stat. 733, 741. For fiscal year 1983, see section 107 of Public Law 97-377, December 21, 1982, 96 Stat. 1830, 1909; and section 109 of Public Law 97-276, October 2, 1982, 96 Stat. 1186, 1191. For fiscal year 1982, see section 1701(b) of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, August 13, 1981, 95 Stat. 357, 754. For fiscal year 1981, see section 114 of Public Law 96-369, October 1, 1980, 94 Stat. 1351, 1356. For fiscal year 1980, see section 613 of the Treasury, Postal Service, and General Government Appropriations Act, 1980, Public Law 96-74, September 29, 1979, 93 Stat. 559, 576.

5343 of title 5, United States Code, if such adjustment is granted pursuant to a wage survey (but only with respect to prevailing rate employees described in section 5342(a)(A) of that title)." Section 613(a), Treasury, Postal Service, and General Government Appropriation Act, 1980, Public Law 96-74, September 29, 1979, 93 Stat. 559, 576. (Underscoring supplied.)

Similar restrictions on increases in wage rates of prevailing rate employees were enacted each year since fiscal year 1979. The legislative history of the first of these caps on wage increases for prevailing rate employees, which was for fiscal year 1979, shows that the cap was enacted so that all federal employees, including prevailing rate employees and General Schedule employees, would be treated equally. See S. Rep. No. 939, 95th Cong., 2d Sess. 55-56 (1978).

The Office of the District Engineer, Rock Island District, contends that section 613 of Public Law 96-74, set forth above, prevents the reassignment of the transferred employees to the Rock Island District wage schedule as would normally be the practice under Federal Personnel Manual Supplement (FPM) 532-1, (Inst. 17 April 14, 1980). Specifically, section S11-10, "Special Pay Plan For Corps of Engineers, U.S. Army Navigation Lock and Dam Employees," of FPM Supplement 532-1 provides as follows:

"a. Pay policy. Nonsupervisory, leader, and supervisory prevailing rate employees of the Corps of Engineers, U.S. Army, who are engaged in operating navigation lock and dam equipment, or who repair and maintain navigation lock and dam operating machinery and equipment, are subject to one of the following pay provisions.

* * * * *

"(2) If navigation lock and dam installations under a District headquarters office are located in more than one FWS wage area, the operating and repair employees are paid from a special schedule having rates identical to the regular FWS wage schedule authorized for the headquarters office."

The Commanding Officer explains that on June 29, 1980, as a result of a realignment of District boundaries, eight locks and dams on the Illinois Waterway were "transferred in place" from the Chicago District to the Rock Island District. Under the FPM Supplement provision quoted above, when employees under a District headquarters office are located in more than one federal wage schedule wage area, as is the case here, the employees all should be paid on the wage schedule for the wage area containing the Headquarters. The District Corps of Engineers contends that it was unable to reassign the transferred employees to the Rock Island District wage schedule, as would be normal practice pursuant to the cited FPM guidance, because in changing from one wage schedule to another the employees would receive a pay increase in excess of that allowed under the pay cap legislation quoted above. The District Engineer agrees with the National Federation of Federal Employees that the situation created is inequitable in that employees are performing similar work within the Rock Island District, but are receiving substantially different wage rates for the performance of that work.

We note that in addition to section S11-10 of FPM Supplement 532-1, cited by the District Engineer as providing applicable guidance for applying proper pay schedules, section S8-8 of the same FPM Supplement is also relevant. That paragraph deals with employees who are in wage areas or parts of wage areas that are consolidated with other wage areas. When that occurs, the employee is placed in the same grade and step on the new wage schedule as he was in on the old wage schedule, unless that would result in a lower rate of pay. The paragraph goes on to set out the rules to follow when there would be a lower rate of pay in the new wage schedule. Thus, under both of these provisions of the FPM Supplement, if the pay caps had not been enacted, there is no question that the employees who were "transferred in place" would have been placed on the new wage schedules.

The Office of Personnel Management issued FPM Bulletin 532-52, December 22, 1983, to provide agencies with guidance in applying the fiscal year 1984 limitations on appropriated and nonappropriated fund wage schedule pay increases for the Federal Wage System. As noted earlier, the fiscal year 1984 limitation is substantively the same as that pertaining for fiscal year 1980. The FPM Bulletin states at paragraph 5 as follows:

"Other Actions Not Affected

"It should be noted that this [fiscal year 1984] pay increase limitation under Public Law 98-151 does not restrict other pay changes, such as promotions, step increases, transfers or reassignments between wage areas, and reclassifications." (Underscoring in original.)

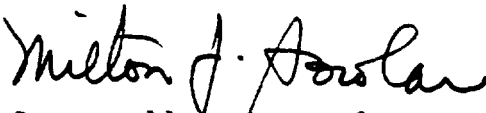
All of the above sources deal with pay changes that arise for reasons other than wage surveys, for example, area consolidations or realignments, step increases, transfers, or reassignments. We believe that the "transfer in place" that occurred here is more analogous to these actions than it is to a wage survey change in salary rates. The legislative pay cap applies to salary rate changes arising from a wage survey. We recently reviewed the application of pay cap legislation to the initial establishment of a new wage schedule under the provisions of the Monroney Amendment, 5 U.S.C. § 5343(d). In that case, 64 Comp. Gen. 227 (1985), we held that the pay cap applied because the new wage schedule was the direct result of a wage survey. Here, the "transfer in place" of the employees from one district to another led, under provisions of the FPM Supplement 532-1, to application of a different, but existing wage schedule. Any increase in pay rates because of the use of the "new" (for these particular employees) wage schedule is the result of the "transfer in place," not a wage survey.

There is nothing in the express language of the pay caps or in their legislative histories which would require or support the view that the restriction on increases in wage rates of prevailing rate employees contained in the Treasury, Postal Service, and General Government Appropriations Act of 1980, prohibits the application of the wage schedules in effect for the Rock Island District to the prevailing rate employees transferred into that District from the Chicago District on June 29, 1980. The pay cap language contained in the appropriations acts is specifically self-limiting to pay increases ("adjustments") "granted pursuant to a wage survey." The wage adjustments required in the circumstances of this case are the result of a transfer or realignment of wage districts and not as a

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result of any particular wage survey. Therefore, the maximum salary increase restriction for prevailing rate employees is not applicable to the employees in question.

In view of the above, the pay caps do not serve as a bar to applying the applicable wage rate schedules for the Rock Island District to the employees transferred thereto on June 29, 1980, and the Corps of Engineers may legally institute the necessary wage adjustments and make retroactive pay adjustments effective as of June 29, 1980.

for 
Comptroller General
of the United States